

EXECUTIVE OFFICER SUMMARY REPORT  
December 11, 2002

ITEM: 10

SUBJECT: **Cover sheet for 2<sup>nd</sup> mailing** Administrative Civil Liability with Mandatory Minimum Penalties against Kinder Morgan Energy Partners – SFPP, LP Mission Valley Terminal, Treatment System, San Diego, CA for violations of Order No. 2001-96, NPDES Permit No. CAG919002. If the discharger elects to waive their right to a hearing, the matter will be removed from this agenda to allow for a 30-day public review period. (Tentative Order No. R9-2002-0385) (Sherrie Komeylyan)

PURPOSE: To transmit State Water Resources Control Board (SWRCB) comments, Kinder Morgan Energy Partners, L.P. (Kinder Morgan) comment letter dated November 27, 2002, and staff's discussion of comments memorandum.

DISCUSSION: Kinder Morgan submitted a comment letter dated November 27, 2002 on December 4, 2002 in which they have requested the reduction or rescission of the penalties. Kinder Morgan contends that the it is inappropriate to assess penalties for violations due to increased frequency of monitoring required by Order No. 2001-96.

Staff has discussed the issue of assessment of Mandatory Minimum Penalties (MMPs) for the increased monitoring frequency with staff Counsel and Darrin Polhemus, Chief of the Compliance and Enforcement Unit, SWRCB. The Office of Chief Counsel and State Water Resources Control Board concur with the assessment of Mandatory Minimum Penalties for the violations listed in Table 1 of tentative Order No. R9-2002-0385.

Attached is a copy of an email correspondence from Darrin Polhemus supporting the assessment of MMPs for the violations associated with the more frequent monitoring.

Staff has reviewed Kinder Morgan's comments and does not recommend approval of Kinder Morgan's request for rescission or reduction of the penalties. The attached memorandum dated December 5, 2002 contains staff's discussion and response to Kinder Morgan's comments.

LEGAL CONCERNS: None

COMPLIANCE  
RECORD:

Since the issuance of Complaint No. R9-2002-0205 Mission Valley Terminal continues to violate Order No. 2001-96. As shown in Table 2 (attached) the violations consist of eight chronic toxicity violations during the months of July – October 2002.

SUPPORTING  
DOCUMENTS:

- (4) Email correspondence from Darrin Polhemus, SWRCB dated November 27, 2002.
- (5) Comment letter from Kinder Morgan Energy Partners dated November 27, 2002 and received December 4, 2002.
- (6) Staff's discussion of and Response to Comments memorandum dated December 5, 2002.
- (7) Table 2 - Toxicity Violations for the monitoring period of July 2002 - October 2002
- (8) Excerpts from the *Clean Water Enforcement and Pollution Prevention Act of 1999 (SB 709) and Amendments (SB 2165)* Questions and Answers Document, Question Nos. 35, 39, and 40.

RECOMMENDATION: Staff recommends adoption of tentative Order No. R9-2002-0385.